

Remarks and Arguments

Claims 20-56 were rejected for obviousness-type double patenting over U.S. Patent No. 6,095,985. While the rejected claims differ from those of the cited patent, the applicants are willing to file a terminal disclaimer to obviate this basis for rejection, if the application is otherwise found to be in condition for allowance. The terminal disclaimer is not being submitted at this time, however, as the other rejections made by the examiner must first be resolved.

Claims 20-31, 33, 36, 41-45 and 47-56 were rejected under 35 U.S.C. §102(b) as being anticipated by the article to Dahlstrom et al. ("Dahlstrom") entitled "Patient Computers to Enhance Compliance with Completing Questionnaires." In making this rejection, the examiner argues that the device described by Dahlstrom, the "MiniDoc," allows for the subjective input of users. The examiner also states that Dahlstrom describes the use of a "time tag" given to every recording (which he considers analogous to a time base), and that the article describes the connection of the device to a modem. Dahlstrom was therefore determined to include all of the features of the claimed invention. However, there are some notable differences between Dahlstrom and the applicants' invention, as claimed.

Dahlstrom's "MiniDoc" is a small portable computer configured for the collection of data from a user in response to a questionnaire program. The MiniDoc is given to patients who are asked to use it daily. The questionnaire prompts a patient to answer a variety of questions pertaining to their medical regimen. After several weeks, the patient brings the MiniDoc along to a scheduled appointment with a physician, at which time the data collected from the patient is transferred to a database on the physician's computer.

Although Dahlstrom discloses a device capable of doing data collection from patients, it is limited in its ability to function independent of scheduled intervention by the medical personnel overseeing the data collection. Thus, the data must be downloaded from the device to a physician's personal computer, typically during a

scheduled appointment with a physician. As pointed out by the examiner, Dahlstrom mentions the possibility of the device connecting to a modem, to allow it to communicate with a computer. But, in such a case, the MiniDoc is just a passive data storage device, and has no ability to initiate a data transmission. On page 240, lines 4-8, Dahlstrom states:

[i]n studies in which a close follow-up of the patients is necessary also between the visits to the physician, the MiniDoc can be connected to a central computer via a modem using the patient's own telephone line. The central computer can then automatically call the various MiniDocs in a study and retrieve the data collected during the day.

Notable in this discussion is that the computer must place calls to the patient's telephone lines. To accomplish this, the computer must have the phone number for the expected location of each of the MiniDocs, and can only contact one of them at a time. The MiniDoc must also be in place, and connected to the modem, at the time the call is placed. The attempt to connect to a MiniDoc fails if the MiniDoc is not present at the number when the call is placed. So, if the patient forgets to connect the MiniDoc to the modem at the right time, or connects it incorrectly, the call will not go through. Similarly, if the designated phone line is in use, or is disabled for some reason, the attempt to connect will fail. Moreover, all of the telephone numbers for the patients must be stored by the computer, and the numbers and appropriate calling times must be updated.

It is clear from a reading of Dahlstrom that the MiniDoc is not capable of directly connecting to a communication network. The present invention provides a unit that connects directly to the network and initiates communication with the central database. This greatly simplifies the data collection process, and improves the reporting rate by avoiding any missed data collection attempts that can occur with a device like the MiniDoc. Moreover, the reporting becomes asynchronous, as the data collection does not have to be on a fixed calling schedule. Rather, the health tracker may be connected to any available communications network at any time convenient for the user, and communication with the central database will be successful. It is not necessary for the

central database to keep track of or update the telephone numbers of the various patients, thereby reducing the possibility of errors in this regard.

Claim 20 is directed to a personal subjective health tracker that includes a portable data logger and a modem. The claim, as originally submitted, recites that the data logger is configured to directly connect to the modem, and that the modem is capable of directly connecting to a communication network. To even further distinguish it from the Dahlstrom prior art, Claim 20 has been amended to specify that the data logger is configured "to initiate communication via the modem." This provides an additional distinction between the claimed invention and the cited prior art, as the Dahlstrom reference makes it clear that it is a physician's computer that must initiate communication with the portable units, resulting in all the attendant disadvantages discussed above. There is no suggestion in Dahlstrom of a portable health tracker having the features of Claim 20, as amended. A similar amendment has been made to Claim 49, and that claim is also unsuggested by Dahlstrom for the same reasons. Claims 21-31, 33, 36, 41-45, 47 and 48 each depend ultimately from Claim 20, and Claims 50-56 each depend ultimately from Claim 49, and these dependent claims are therefore likewise unsuggested by the cited prior art. Reconsideration of Claims 20-31, 33, 36, 41-45 and 47-56 under this ground for rejection is respectfully requested.

Claims 32, 34, 35, 37-40 and 46 were rejected under 35 U.S.C. §103(a) as being obvious over Dahlstrom in view of the *Byte* article entitled "The Point of the Pen" ("Carr"). In making this rejection, the examiner has argued that Dahlstrom fails to disclose a device that can use a stylus to write information on a portable data logger, but that Carr discloses such a device. The examiner concludes that it would have been obvious for Dahlstrom to employ a stylus device like that of Carr.

The Dahlstrom reference has been discussed above. Carr discloses a portable handheld device that allows for data input via a stylus. However, Carr appears to be completely unrelated to the medical field. Moreover, the combination of Dahlstrom and Carr still fails to suggest the invention recited in Claim 20, for the same reasons as are

discussed above. Since each of Claims 32, 34, 35, 37-40 and 46 depends ultimately from Claim 20, these claims are therefore equally unsuggested by the cited prior art. Reconsideration of Claims 32, 34, 35, 37-40 and 46 under this ground for rejection is respectfully requested.

In light of the foregoing amendments and remarks, it is respectfully requested that all the claims be allowed such that the application may be passed to issue. If it is believed that a telephone conference would help expedite prosecution of the application, the examiner is invited to call the undersigned. The Commissioner is hereby authorized to charge any fees due for the filing of this paper to the applicants' attorneys' Deposit Account No. 02-3038.

Respectfully submitted



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